

General Information Letter: Taxpayers were subject to penalty for failure to make timely payments of estimated tax.

September 2, 2003

Dear:

This is in response to your letter dated August 12, 2003, in which you request a ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

In your letter you have stated the following:

The attached copy of the Ill Dept of Revenue letter shows that the IDOR hired people who stopped thinking with the use of computers. This is alright if the computer was programmed properly in accordance with Illinois LAW but as pointed out in my letter of 7/14/03, it is not.

Your "Revenue Tax Specialist" letter shows that the "Step 3 computation per IL-2210 allows you to use the overpayment to pay any unpaid amount in Step 4 penalty worksheet 2" and this is correct and as it should be. And, your Step 4 penalty worksheet 2 does show that the overpayment 39.00 (Column D) applied to the unpaid amount of 39.00 (Column C) resulted in a balance due of 0.00 (Column E). And, any child can tell you that 0.00 times the penalty rate equals . . . ZERO.

Why do taxpayers/tax preparers have to do the Step 3 & Step 4 Worksheet 2 Columns D & E computations if the Ill Dept of Revenue computers totally disregard this information which is a disgrace? Instead of passing this letter to some "Revenue Tax Specialist", this problem should be reviewed by one of your lawyers who will review the Illinois statute regarding the penalty for underpayment of estimated tax & insure that the IL-2210 conforms to the Illinois LAW in its entirety. Once the truth is discovered, then the Ill Dept of Revenue should immediately revise the IL-2210 & its associated instructions and change the computer programming. Also, the people who paid this penalty which they were not legally required to pay, should receive a refund of this penalty + interest.

I have advised Mr. and Mrs. Z not to pay the penalty per your "Revenue Tax Specialist" letter dated 7/21/03. If the Ill Dept of Revenue does not acknowledge that the penalty was erroneous or sends a follow-up letter to Mr. & Mrs. Z attempting to charge interest on the penalty, this penalty will be brought to the attention of the newspapers so that pressure will be placed on the Governor and the IDOR.

THIS IS NOT A THREAT, THIS IS A PROMISE.

As shown on the Form IL-2210 sent to Mr. and Mrs. Z by Patty Louthan on July 21, 2003, the Zs' Illinois income tax liability for 2002 was \$4,229, after credits. The Zs' withholding was \$2,064. The

Zs paid the remaining \$2,165 of their liability on March 27, 2003. On their 2001 return, the Zs reported a liability of \$2,220 after credits.

### **Response**

Section 803(a) of the Illinois Income Tax Act (35 ILCS 5/803) provides:

Every taxpayer other than an estate, trust, partnership, Subchapter S corporation or farmer is required to pay estimated tax for the taxable year, in such amount and with such forms as the Department shall prescribe, if the amount payable as estimated tax can reasonably be expected to be more than (i) \$250 for taxable years ending before December 31, 2001 and \$500 for taxable years ending on or after December 31, 2001 or (ii) \$400 for corporations.

Section 803(b) defines "estimated tax" to mean:

the excess of:

(1) The amount which the taxpayer estimates to be his tax under this Act for the taxable year, over

(2) The amount which he estimates to be the sum of any amounts to be withheld on account of or credited against such tax.

Section 803(d) of the Illinois Income Tax Act provides:

There shall be paid 4 equal installments of estimated tax for each taxable year, payable as follows:

Required Installment: Due Date:

1st April 15

2nd June 15

3rd September 15

4th Individuals: January 15 of the following taxable year Corporations:  
December 15

Section 804 of the Illinois Income Tax Act (35 ILCS 5/804) provides, in part:

(a) In case of any underpayment of estimated tax by a taxpayer, except as provided in subsection (d) or (e), the taxpayer shall be liable to a penalty in an amount determined at the rate prescribed by Section 3-3 of the Uniform Penalty and Interest Act upon the amount of the underpayment (determined under subsection (b)) for each required installment.

(b) Amount of underpayment. For purposes of subsection (a), the amount of the underpayment shall be the excess of:

(1) the amount of the installment which would be required to be paid under subsection (c), over

(2) the amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) Amount of Required Installments.

(1) Amount.

(A) In General. Except as provided in paragraph (2), the amount of any required installment shall be 25% of the required annual payment.

(B) Required Annual Payment. For purposes of subparagraph (A), the term "required annual payment" means the lesser of

(i) 90% of the tax shown on the return for the taxable year, or if no return is filed, 90% of the tax for such year, or

(ii) 100% of the tax shown on the return of the taxpayer for the preceding taxable year if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of 12 months.

Section 804(f) of the Illinois Income Tax Act provides:

For purposes of subsections (b) and (c), the term "tax" means the excess of the tax imposed under Article 2 of this Act, over the amounts credited against such tax under Sections 601(b) (3) and (4).

Section 804(g) of the Illinois Income Tax Act provides:

For purposes of applying this Section in the case of an individual, tax withheld under Article 7 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

Section 3-3(b-10) of the Uniform Penalty and Interest Act (35 ILCS 735/3-3) provides, in part:

This subsection (b-10) is applicable to returns due on and after January 1, 2001. A penalty shall be imposed for failure to pay:

(1) the tax shown due on a return on or before the due date prescribed for payment of that tax, an amount of underpayment of estimated tax, or an amount that is reported in an amended return other than an amended return timely filed as required by subsection (b) of Section 506 of the Illinois Income Tax Act (penalty for late payment or nonpayment of admitted liability). The amount of penalty imposed under this subsection (b-10)(1) shall be 2% of any amount that is paid no later than 30 days after the due date, 5% of any amount that is paid later than 30 days after the due date and not later than 90 days after the due date, 10% of any amount that is paid later than 90 days after the due date and not later than 180 days after the due date, and 15% of any amount that is paid later than 180 days after the due date.

Section 1.11 of the Statute on Statutes (5 ILCS 70/1.11) provides:

The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Saturday, Sunday or holiday is also a holiday or a Saturday or Sunday then such succeeding day shall also be excluded.

Applying this law to the facts, the Zs were required to make four equal installment payments of estimated tax for the year 2002 on April 15, June 17, and September 16 of 2002, and January 15 of 2003. The required installment was 25% of the lesser of 90% of the tax liability (net of credits) shown on their 2002 return or 100% of the tax liability (net of credits) shown their 2001 return. The \$2,220 liability net of credits shown on the 2001 return is less than 90% of the \$4,229 liability net of credits shown on the 2002 return, so the required installments were \$555 each (25% of \$2,220).

Pursuant to Section 804(g) of the Illinois Income Tax Act, 25% of the \$2,064 in taxes withheld from the Zs during 2002, or \$516, was deemed paid toward each \$555 required installment on the due date of each installment. This leaves an amount of \$39 (\$555 minus \$516) for each installment which remained unpaid until the Zs paid their liability on March 27, 2003.

Applying the provisions of Section 3-3(b-10)(1) of the Uniform Penalty and Interest Act to these facts, the \$39 underpayment of the installment due on April 15, 2002, was not satisfied until March 27, 2003, which is more than 180 days late. Accordingly, the penalty was 15% of \$39, or \$5.85. Similarly, the \$39 underpayments of the installments due on June 17 and September 16 of 2002 were satisfied more than 180 days after the due dates, and so also incurred penalties of \$5.85 apiece. The \$39 underpayment of the January 15, 2003, installment was satisfied 71 days later, and therefore incurred a penalty of 5%, or \$1.95.

These are the penalty amounts computed on the Form IL-2210. Your statement that no penalty is due because the "balance due" amount shown in Column E of the Penalty Worksheet 2 is zero is contrary to the law, to the Form IL-2210, and to the express provisions in the instructions.

On the Form IL-2210, the penalty is imposed on the "unpaid amount" in Column C of each, which in this case is the \$39 which was not timely paid for each installment. The "balance due" amount in

Column E of each line is merely the portion of that "unpaid amount" that remains unpaid after the application of the payment in Column D of that line. When the payment in Column D is late, there is a penalty even if that payment reduces the "unpaid amount" to zero.

As expressly stated in the instructions to Column I, when application of the payment listed in Column D of a line satisfies the "unpaid amount" shown in Column C of that line, so that the "balance due" in Column E is zero, the penalty to be entered on that line in Column I is the penalty rate shown in Column H times the unpaid amount in Column C. Following these instructions, the Form IL-2210 computes the correct amount of penalty, so there is no error in the form, the instructions, or the manner in which they were applied by the Department in this case.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton  
Deputy General Counsel – Income Tax